

EXHIBIT F-2

1 CHRISTINE WITTHOHN

2 I extrapolated from Publishers
3 Marketplace and backed up with looking
4 at -- and this is from her list, that
5 was -- that was on her website at that
6 time, I compared it -- I compared her
7 sales to the Publishers Marketplace and
8 to Amazon, and it is my opinion -- my
9 professional opinion, that she wasn't
10 making that much money.

11 Q Okay.

12 And is that across the whole
13 period or is that -- what you say here is
14 that her representation was getting less
15 profitable during those years.

16 A It was. You could tell.

17 Q And how do you -- what
18 information specifically were you looking
19 at that tells you that her representation
20 of her biggest clients was getting less
21 profitable?

22 A She was making smaller
23 traditional deals. She was going to,
24 let's take -- let's -- let's look at it
25 then.

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2 Q Okay.

3 A She had three -- she had five
4 traditional deals in 2010. Five
5 traditional, three category, zero
6 digital, and zero work-for-hire. Okay.

7 Q So eight total deals, correct?

8 A It's not the number of deals.
9 Because if you don't get -- here is the
10 point, okay. If you do a deal, eight
11 deals, that's why this is -- this is
12 difficult for a jury to understand.

13 Just because you have a deal,
14 doesn't mean you get paid right away.
15 You have to wait for the money.
16 Sometimes for digital deals you have to
17 wait until the money comes in. You have
18 to wait until the book is published which
19 company take up to 24 to 36 months.
20 Okay?

21 So just because it said she
22 made -- your -- you said eight deals,
23 doesn't mean she got paid for eight
24 deals.

25 Q How many deals did she get paid

1 CHRISTINE WITTHOHN

2 for?

3 A I don't know. You will have to
4 ask her because it's going to probably go
5 by past deals, each year.

6 Q Okay.

7 So let's move on to 2011.

8 There's two in the traditional category,
9 two category, and two that you have
10 listed as small digital press. So that's
11 six deals in 2011, with the caveat that
12 you don't know when she is getting paid
13 on any of these deals.

14 A Correct.

15 Q 2012, four traditional, two
16 category, two small digital press. A
17 total of eight, same as 2010.

18 2013, six traditional, five
19 category, 15 small digital press, and one
20 short story. That's a total of 26 deals
21 in 2013. One of which was a very nice
22 deal and one of which was a good deal,
23 correct?

24 A Yes.

25 Q Okay.

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2 And then in 2014, five
3 traditional, one category, five small
4 digital press, one novella, two
5 work-for-hire. So if I am counting up
6 right, that's 13 deals.

7 The following year, it's two
8 traditional, one novella, 11 small
9 digital press, two work-for-hire. So now
10 we are at, what, 15.

11 So I guess what I'm asking,
12 what -- isn't your statement that Ms. Kim
13 was -- that her representation of her
14 biggest clients was getting less
15 profitable, isn't that belied by these
16 numbers?

17 A No.

18 Q So what about these numbers is
19 telling you that her representation was
20 getting less profitable?

21 A Well, you -- you -- by your --
22 by what you are saying, you are saying
23 because she had so many deals, she was
24 making all this money.

25 Let's take for example, you left

1 CHRISTINE WITTHOHN

2 off with 2015, two traditional, one
3 reissued novella, which is really not --
4 if it's a reissue, it's not a new deal --
5 zero category, and 11 small presses.

6 Again, let's go back to what I
7 just said just a bit ago. Small digital
8 presses, tend not to pay anything
9 upfront, most of them don't, actually.
10 They don't show any good faith upfront,
11 which is why I don't like those kind of
12 deals. You have to wait until the book
13 comes out.

14 Now sometimes they could get it
15 to -- depending on what Emily negotiated,
16 sometimes they can get it to market
17 faster than 24 months. Usually with that
18 -- digital presses, they are a little bit
19 more nimble than print, so they don't
20 need to take up to 24 months in order to
21 publish a book.

22 But keep in mind, she is not
23 going to see any of that money. She is
24 not going to see -- if any money, until
25 those books come out and those books

1 CHRISTINE WITTHOHN

2 start making money.

3 Q So in 2016, she did six
4 traditional deals which is the most she's
5 ever done in any year, at least according
6 to your chart. She did that in 2013,
7 2016, 2020.

8 A Hm-hm.

9 Q What I am trying to understand
10 from you, Ms. Witthohn is, what is your
11 basis for claiming that her about biggest
12 earning clients was getting less
13 profitable from 2010 to 2019?

14 A Because she only had one listed
15 good deal, okay. One -- and that was in
16 2013. All these are little tiny deals.
17 They are not big deals. I didn't look --
18 I want to say -- I don't remember if I --
19 I don't know if I actually looked at
20 before 2010. I tried to focus on -- for
21 this case, I tried to focus on from 2010
22 up. So that's -- but I want to say I did
23 look, I can't remember. Anyway...

24 Q So that's my question.

25 What do you mean by much less

1 CHRISTINE WITTHOHN

2 profitable? Are you comparing the early
3 part of the decade with later in the
4 decade?

5 What are you -- what is -- less
6 profitable than what?

7 A Exactly what I just said,
8 digital presses. Digital or small
9 presses tend not to give you any good
10 faith money. They may give you a higher
11 percentage but they are limited --
12 usually they are limited to what
13 platforms they sell on which comes into
14 play when you are trying to make some
15 money.

16 But it just makes it harder
17 because the author -- the agent, as an
18 agent, you're selling all these deals,
19 but you have to wait for any income to
20 trickle in from when the books are
21 published.

22 And she is selling -- same thing
23 with traditional. With traditional -- by
24 the time Emily and I became agents, the
25 period of, you know, six figure -- easy

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2 six figure advances were gone, okay. And
3 by 2010, advances -- most advances for --
4 let's use it for romance because that's
5 what Emily does a lot of, she does
6 children's too, but for all intents and
7 purposes let's say we are talking about
8 romance. Romance advances significantly
9 dropped. Okay. I can tell you from my
10 own experience that I have sold -- I
11 haven't done a lot of digital deals
12 because -- for that reason, because they
13 don't show any good faith money.

14 But the traditional deals, even
15 her -- let's say her good deal, her good
16 deal is going to be broken up into maybe
17 half and half upon signing, and half upon
18 delivery, or it's going to be broken up
19 three or four depending on what you
20 negotiate and what house you're
21 negotiating with.

22 Q Okay. I understand that, Ms.
23 Witthohn.

24 I guess what I'm asking here,
25 though, is -- you are describing why it's

1 CHRISTINE WITTHOHN
2 difficult to make -- to be successful as
3 an agent generally. You are saying that
4 the payments don't come in as soon as --
5 as soon as you cut a deal, it takes time.
6 Presumably that rolls year to year, but
7 fine.

8 But you are describing why it's
9 difficult to be an agent and why any
10 agent might struggle to -- to do well.

11 What I am trying to understand
12 here, though, is your claim, the specific
13 claim that Kim's biggest earning clients
14 were earning less money for her over the
15 time from 2010 to 2019.

16 A Well, as I said before, Opal
17 Carew was her biggest client, as I could
18 tell, from the sales -- from Publishers
19 Marketplace and BookScan and Amazon, and.

20 Q Where are the Opal Carew sales
21 listed here in your chart of the
22 different deals --

23 (Simultaneous Crosstalk.)

24 A She didn't have any. That's my
25 point.

1 CHRISTINE WITTHOHN

2 Q Starting in 2010?

3 A I don't remember what -- I don't
4 remember what year she just dropped off.
5 The reason for dropping off, you said did
6 I know she was sick. If that was the
7 case, she still dropped off. I don't --
8 I haven't seen any Opal Carew sales from
9 Emily since.

10 So I am just telling you -- and
11 that was from what I could tell that was
12 her biggest client until --

13 (Simultaneous Crosstalk.)

14 Q How big a client compared to her
15 other clients?

16 A Well, she was making her the
17 most money.

18 Q How much was she making her per
19 year?

20 A I don't know.

21 Q How do you know she was making
22 her the most money?

23 A Because of her sales.

24 Q Because -- Opal Carew sales.

25 During what time period was she

1 CHRISTINE WITTHOHN

2 making Emily Kim the most money?

3 A That would be a question for
4 Emily.

5 Q No. It's a question for you,
6 because you are making statements about
7 her losing Opal Carew causing her to have
8 significantly less sales between 2010 and
9 2019?

10 A Her sales with Opal just
11 stopped.

12 Q What were they before they
13 stopped?

14 A They were actually pretty good.

15 Q Ballpark?

16 A I don't know. I don't recall.

17 Q How much was Emily making on
18 those?

19 A Again, you will have to ask her
20 exact amount. I don't know.

21 Q Okay.

22 Going back to your -- so first
23 of all, let me ask you a question about
24 Publishers Marketplace.

25 The data that you are citing

1 CHRISTINE WITTHOHN

2 here, these -- when it says -- when it
3 talks about a deal and it's a nice deal,
4 and it's a number between zero and
5 \$49,000, that is a reference to the
6 advance, correct?

7 A Correct.

8 Q So if you see an advance that
9 falls into the nice deal category, what
10 does that tell you about what commissions
11 the agent would ultimately make on the
12 sales of a book that comes out of that
13 deal?

14 A Well, the nice deal -- a nice
15 deal would tell me that they had X-amount
16 of dollars that they got for the advance.
17 The author still has to earn that advance
18 back, okay. And they do that by selling
19 books.

20 Q Right.

21 A Okay. But they get a chunk of
22 money upfront which is helpful for the
23 author, so they can feed their families
24 and it helps the agents so they could
25 feed their families.

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2 So if they have fewer deals that
3 she is selling traditionally, where she
4 gets advances, opposed to deals that
5 digital presses which usually doesn't
6 give any advances, that's what I am
7 saying.

8 Q So is it -- I think we are
9 getting somewhere here.

10 So it's your opinion that Emily
11 Kim had fewer traditional deals between
12 2010 to the end of 2019 as opposed to
13 deals with digital presses; is that
14 correct?

15 A Correct. Correct. It appears
16 she was relying on digital and
17 work-for-hire.

18 Q So is it your view here that the
19 numbers of traditional deals from 2010
20 and 20 -- and your list goes to 2020;
21 five, two, four, six, five, two, six,
22 five, four, one, six, that represents a
23 decline in traditional deals over that
24 10 years for Prospect Agency?

25 A Well, first of all, I think they

1 CHRISTINE WITTHOHN

2 are low numbers. If she only had five
3 traditional deals in the whole --

4 (Simultaneous Crosstalk.)

5 LANCE KOONCE: That's not my
6 question, Ms. Witthohn. Strike
7 that answer.

8 BY BEN HALPERIN:

9 Q I'm asking you whether or not
10 this represents a decline in traditional
11 deals over the course of that 10 years?

12 A Say it again.

13 Q Do the numbers that you have in
14 paragraph 15, year to year for
15 traditional deals, do they represent a
16 decline in the number of traditional
17 deals that Emily Kim was doing year over
18 year?

19 A Some, yes.

20 Q So the trend you see in those
21 numbers is a trend downward in
22 traditional deals?

23 A We go from five to two to four
24 to six to five to two to six to five to
25 four to one to six.

1 CHRISTINE WITTHOHN

2 Q Is that a trend downward to you?

3 A Most of them are down.

4 Q I don't know what you mean by
5 "most of them are down"?

6 A Well, I mean, would you say that
7 two is less than five. I am not --
8 that's what I am referring to.

9 Q I would say two is less than
10 five, yes. But then I would say then the
11 next year, four is more than two. The
12 next year six is more than four and two
13 and five.

14 A Okay. Well, I am just -- from
15 my personal opinion, from the sales that
16 she has, she was heavily dependent upon
17 digital and work-for-hire.

18 Q Well, let's talk about that.

19 I mean in 2010, '11, and '12,
20 she had a total of four deals with small
21 or digital presses and none with
22 work-for-hire.

23 Starting in 2013, she added, you
24 know, that was the year she added the
25 most she ever had that you list of

1 CHRISTINE WITTHOHN
2 traditional deals -- she had 15 small
3 presses. And then the following years it
4 was five, it was 11, it was 13.

5 So isn't it true, Ms. Witthohn,
6 in fact, what this status shows is that
7 Ms. Kim had a pretty steady year-to-year
8 business and traditional deals and added
9 a lot of small press deals over time
10 starting in 2013?

11 A I would not -- I would not agree
12 with that statement.

13 Q Why?

14 A 2013, it appears that she had a
15 decent year. But overall, I mean, 2011,
16 she had two traditional, two category,
17 and two digital. That's not going to be
18 enough to feed her family.

19 She had, in 2012, she had four
20 traditional, two category, two small
21 presses. Again, same thing.

22 2013, she actually did a little
23 better in 2013. I don't poo-poo Emily
24 for trying to earn a living. But her
25 small presses is what I am saying is, for

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example, in 2013, she did, in fact, have six traditional deals. But those 15 small digital presses aren't going to be making her a whole lot of money until those books come out.

Q But the statement -- the opinion you're backing up with this data, isn't it that Kim's biggest earning clients were earning her less money from -- starting in 2010 moving to 2019?

Aren't you -- isn't your opinion about a trend in her profitability from her biggest clients?

A Yes. Her biggest client was Opal and I stand by my statement.

Q Well, it doesn't say client. It says clients.

A From the data that I saw, that is true.

Q What is true?

A What I said.

Q That -- that for her biggest earning clients, her -- she was making less money from 2010 to 2019?

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2 A She was making less money.

3 Q So in 2010, how much money was
4 she making from her biggest earning
5 clients?

6 A I don't know. That, again --
7 you know, she had one nice -- very nice
8 deal. The rest, let's say, that they
9 were all nice deals because usually if
10 you don't say anything, they are usually
11 just nice deals.

12 Q Which of the deals in 2010 were
13 for her biggest earning clients?

14 A I don't recall that information.
15 I don't --

16 (Simultaneous Crosstalk.)

17 Q What about 2011?

18 A Again, I don't recall which
19 clients did what. I only went by -- I
20 broke it down into traditional
21 categories, and small presses.

22 Q Okay.

23 Do you believe all of Emily Kim
24 deals are represented in the Publishers
25 Marketplace data?

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2 A No. In fact, I know they are
3 not.

4 Q Okay.

5 So if there are significant
6 number of deals not included, would that
7 change your opinion that her income was
8 on the decline?

9 A Well, I did look at her list at
10 that time and I lined up -- I lined
11 everything up and the only thing I did
12 not see is she didn't list everything
13 that she sold to Entangled Publishing.
14 And she did not, interestingly, list the
15 Crave series.

16 Q And did she list Kristen Ashley?

17 A I don't recall.

18 Q Okay.

19 So where did you -- when you say
20 lined all --

21 (Simultaneous Crosstalk.)

22 Sorry, go ahead.

23 A I said I don't recall exact
24 names. I only recalled, after looking at
25 numbers, I pulled -- I pulled Opal out

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A C K N O W L E D G E M E N T

STATE OF _____

COUNTY OF _____

I, the undersigned, hereby
certify that I have read the transcript
of my testimony taken under oath in my
deposition; that the transcript is a true
and complete and correct record of my
testimony, and that the answers on the
record as given by me are true and
correct.

CHRISTINE WHITTHOHN

Signed and subscribed to before
me this _____ day of _____,
20__.

Notary Public

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1 I, S. Arielle Santos, CSR, CLR,
2 do hereby certify:
3 That prior to being examined, the witness
4 named in the forgoing deposition, was by me
5 duly affirmed remotely under order SC of FL
6 No. AOSC20-23 Amendment 4 (II)(C)(2) to
7 testify the truth, the whole truth, and
8 nothing but the truth.

9 That said deposition was taken before me at
10 the time and place set forth and was taken
11 down by me in shorthand and thereafter
12 reduced to computerized transcription under
13 my direction and supervision, and I hereby
14 certify the foregoing deposition is a full,
15 true and correct transcript of my shorthand
16 notes so taken.

17 I further certify that I am neither counsel
18 for nor related to any party to said action
19 nor in anywise interested in the outcome
20 thereof.

21
22 

23 S. Arielle Santos, CSR

24 FL Notary No. HH 192604 Exp 10/31/2025

25